



December 15, 1999

Mr. Paul Tomme
Legal Counsel
Dallas/Fort Worth International Airport
3200 East Airfield Drive
Post Office Drawer 619428
DFW Airport, Texas 75261-9428

OR99-3636

Dear Mr. Tomme:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 131375.

The Dallas/Fort Worth Airport Board (the "board") received a request for information relating to an employment discrimination complaint filed against the board by the requestor. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.103 of the Government Code provides in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

The governmental body has the burden of providing relevant facts and documents sufficient to demonstrate that section 552.103 is applicable to the information in question. To sustain this burden, the governmental body must demonstrate: (1) that litigation is pending or reasonably anticipated and (2) that the information in question is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App. – Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App. – Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 588 (1991). Both prongs of the test must be met in order for information to be excepted under section 552.103. In this instance, you have demonstrated that the requested information relates to pending civil litigation in which the board is the defendant and the requestor is the plaintiff. We therefore conclude that the requested information is excepted from public disclosure pursuant to section 552.103.

We also note, however, that if the opposing party to the pending litigation has seen or had access to any of the requested information, there is no interest in withholding that information under section 552.103. Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103 ends once the litigation concludes. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Nevertheless, if the requested information contains any information that is confidential by law, the board must not release such information even at the conclusion of the litigation.

We further note that some of the information in question may be subject to disclosure, notwithstanding your claim under section 552.103. We direct your attention to section 552.022 of the Government Code, which provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Thus, if section 552.022(a)(1) encompasses any responsive documents that you have not released to the requestor, then such information is public information under section 552.022, is not excepted from public disclosure, and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the

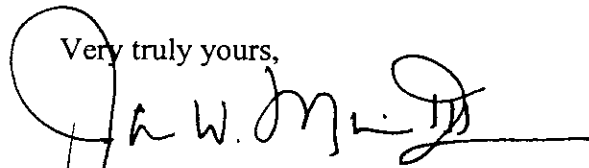
governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a large, stylized initial "J" on the left.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/cwt

Ref: ID# 131375

Encl. Submitted documents

cc: Cipriano R. Gonzales, Jr.
2402 Greenbriar Court
Grand Prairie, Texas 75050-2711
(w/o enclosures)